

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WALTER COMBS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent,

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No. 4:16-CV-1799 JAR

MEMORANDUM AND ORDER

This matter is before the Court on the motion of Walter Combs to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. After review the motion is denied.

Movant was convicted by a jury of distribution of cocaine and possession of a firearm in furtherance of a drug-trafficking crime. *United States v. Combs*, No. 4:13-CR-391 JAR. The Court sentenced him to 186 months' imprisonment. The Court of Appeals for the Eighth Circuit affirmed. *United States v. Combs*, 827 F.3d 790 (8th Cir. 2016).

Movant argues that he is entitled to relief under *Johnson v. United States*, 135 S.Ct. 2551 (2015), in which the Court held that the "residual clause" of the Armed Career Criminal Act ("the ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii), is unconstitutionally vague. The ACCA enhances the punishment for firearms offenses under 18 U.S.C. § 922(g) when the defendant has at least three prior convictions for a "serious drug offense" or a "violent felony." The term "violent felony" is defined in the ACCA as felony offense that "(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (ii) is burglary, arson, or extortion, involves the use of explosives, or *otherwise involves conduct that presents a serious potential risk of physical injury to another.*" 18 U.S.C. § 924(e)(B) (emphasis added). The

“otherwise involves” language of the ACCA is the residual clause that the Supreme Court found unconstitutional. *Johnson*, 135 S.Ct. at 2563. The Career Offender Guideline contains a similar residual clause. *See* U.S.S.G. § 4B1.2(a)(2).

Johnson does not provide movant with relief because his sentence was not enhanced under the ACCA or the Guidelines. Therefore, the motion must be denied. *See* 28 U.S.C. § 2255, Rule 4.

Finally, movant has failed to demonstrate that jurists of reason would find it debatable whether he is entitled to relief. Thus, the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c).


Accordingly,

IT IS HEREBY ORDERED that the motion of Walter Combs to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 is **DENIED**, and this action is **DISMISSED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

An Order of Dismissal will be filed separately.

Dated this 31st day of January, 2017.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE